

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Waiver of Location-Capable Handset	)	WT Docket No. 05-301
Penetration Deadline by Verizon Wireless	)	

**ORDER**

**Adopted: May 3, 2006****Released: January 5, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Verizon Wireless (Verizon),<sup>1</sup> a Tier I wireless service provider.<sup>2</sup> Specifically, Verizon requests a six-month extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>3</sup>

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines pursuant to our waiver authority, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's Rules.<sup>4</sup> Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.<sup>5</sup>

---

<sup>1</sup> See Request for Limited Waiver by Verizon Wireless, CC Docket No. 94-102, WT Docket No. 05-301, filed Oct. 17, 2005 (Verizon Request).

<sup>2</sup> Tier I carriers are Commercial Mobile Radio Service (CMRS) providers with nationwide footprints. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14843 ¶ 7 (2002) (*Non-Nationwide Carriers Order*).

<sup>3</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>4</sup> See Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18277, 18281-86 ¶¶ 13-30 (2001); Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18330, 18335-38 ¶¶ 15-26 (2001); Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18369-74 ¶¶ 16-26 (2001) (*Verizon Waiver Order*); Request for Waiver by AT&T Wireless Services, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18253, 18257-59 ¶¶ 13-19 (2001); Request for Waiver by Cingular Wireless LLC, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18305, 18308-11 ¶¶ 14-20 (2001); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*). Tier III carriers may be entitled to relief pursuant to the Commission's waiver standard or, alternatively, the ENHANCE 911 Act, which (continued....)

3. Based on the record before us, we find that Verizon has not satisfied the criteria required to justify relief from the 95% handset penetration requirement, and we deny Verizon's request for an extension of time to comply. As we explain in more detail below, however, in light of the penetration level Verizon reached by December 31, 2005, and the relatively short period by which it expects to achieve compliance, we will not at this time pursue enforcement action as a result of Verizon's non-compliance. Further, we impose reporting requirements to enable the Commission to monitor Verizon's efforts to achieve compliance with the E911 requirements.

## II. BACKGROUND

### A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>6</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>7</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>8</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>9</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>10</sup>

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.<sup>11</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration, among their subscribers, of location-capable handsets no later than December 31, 2005.<sup>12</sup>

(Continued from previous page)

directs the Commission to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services." National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>5</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

<sup>6</sup> See 47 C.F.R. § 20.18(e).

<sup>7</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

<sup>8</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3, *Location-Capable Handsets*.

<sup>9</sup> See 47 C.F.R. § 20.18(f), (g)(2).

<sup>10</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>11</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>12</sup> See 47 C.F.R. § 20.18(g)(1)(v).

## B. Waiver Standards

6. On September 8, 2000, the Commission released the *Fourth MO&O*, in which it recognized that “special circumstances” may warrant a waiver of the E911 Phase II requirements.<sup>13</sup> The Commission’s general waiver standards require a waiver proponent to show that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> With respect to waiver of the E911 Phase II requirements, the Commission required that waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance,”<sup>15</sup> and that requesting carriers “should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”<sup>16</sup> The requirement that carriers present a “clear path to full compliance,” dictates that we grant relief only when sufficiently justified, and limit any extension of the handset penetration deadline to the shortest practicable time.<sup>17</sup> We otherwise continue to expect carriers to achieve full compliance with the E911 Phase II requirements as soon as possible.<sup>18</sup>

7. In 2001, Verizon sought waiver relief from the E911 requirements. As part of its proposed compliance plan, Verizon committed to meeting the 95% handset penetration requirement by December 31, 2005.<sup>19</sup> In approving Verizon’s proposed E911 compliance plan, the Commission warned Verizon that if it “fails to satisfy any condition or Commission rule, it will be subject to possible enforcement action . . . . We will not entertain requests for additional relief that seek changes in the requirements, schedules, and benchmarks imposed herein absent extraordinary circumstances.”<sup>20</sup>

8. In its 2003 *Order to Stay*,<sup>21</sup> the Commission put carriers on notice that any claim based on factors beyond a carrier’s control would be credited only if the carrier submitted specific evidence substantiating the claim, e.g., documentation that, despite a carrier’s good faith efforts to conclude agreements with outside sources whose equipment or services were necessary to meet the Commission’s

---

<sup>13</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17457 ¶ 43 (2000) (*Fourth MO&O*).

<sup>14</sup> See 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>15</sup> *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

<sup>16</sup> *Id.*

<sup>17</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

<sup>18</sup> See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 45.

<sup>19</sup> *Verizon Waiver Order*, 16 FCC Rcd at 18367 ¶ 10.

<sup>20</sup> *Id.* at 18377 ¶ 34.

<sup>21</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003) (*Order to Stay*).

benchmarks, it was unable to do so.<sup>22</sup> Carriers claiming that financial hardship prevented compliance with the December 31, 2005 95% penetration deadline were advised that a waiver was unwarranted unless the carrier provided sufficient and specific factual information,<sup>23</sup> and that a carrier seeking a waiver based on extraordinary financial hardship could strengthen its justification by submitting documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.<sup>24</sup> Finally, the Commission stated that it:

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>25</sup>

### C. Request and Comments

#### 1. Verizon's Request for Limited Waiver

9. Verizon seeks relief from the requirement that it achieve 95% penetration of location-capable handsets among its subscribers by December 31, 2005, as required by Section 20.18(g)(1)(v) of the Commission's Rules.<sup>26</sup> Verizon states that its existing penetration rate was 91% and should exceed 93% by December 31, 2005.<sup>27</sup> In its quarterly report submitted Jan. 31, 2006, however, Verizon reported that "[t]o date, Verizon Wireless has converted about 93% of its customer base to GPS capable handsets."<sup>28</sup> Verizon asserts that, because of its ongoing efforts to increase penetration of GPS-capable handsets, it expects that 95% of its subscriber base will have such handsets within months of the December 31, 2005 deadline.<sup>29</sup> Therefore, Verizon seeks to defer its obligation to comply with the 95% penetration rule for six months, until June 30, 2006.

10. Verizon asserts that it met or exceeded all of the interim handset milestone deadlines established by the compliance plan approved by the Commission for its GPS-capable handset deployment.<sup>30</sup> In addition, Verizon describes multiple actions it has taken to encourage customers to replace non-GPS handsets, including: offering a variety of GPS handsets across all price ranges; promoting GPS handsets through discounts and free upgrade programs; targeted marketing through mail, text messaging and calls to customers; advising non-GPS customers who call Verizon's customer service that their current phones are

---

<sup>22</sup> *Id.* at 20996-20997 ¶ 25.

<sup>23</sup> *See id.* at 20997 ¶ 29. The Commission noted that it generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>24</sup> *See id.*

<sup>25</sup> *See id.* at 20997 ¶ 28.

<sup>26</sup> 47 C.F.R. § 20.18(g)(1)(v); Verizon Request at 1, 23-30.

<sup>27</sup> Verizon Request at 1, 4, 25-26.

<sup>28</sup> Enhanced 911 Status Report, CC Docket No. 94-102, filed Jan. 31, 2006, at 2 (Verizon E911 Report).

<sup>29</sup> Verizon Request at 24.

<sup>30</sup> *See id.* at 2-3.

not E911-capable; providing web site information on E911 and GPS handsets; and installing a look-up tool on its website that allows customers to check their handset's GPS capability.<sup>31</sup>

11. According to Verizon, its handset penetration has outpaced PSAP Phase II readiness.<sup>32</sup> Verizon states that only about one-third of the PSAPs in Verizon's service areas have deployed its Phase II E911 service, while – on a population basis – slightly more than 50% of Verizon's customers are located in communities where PSAPs have installed Phase II capability.<sup>33</sup>

12. Verizon reports that some legacy customers – including “government agencies, utilities, as well as customers involved in transportation, living in rural areas, and with special applications or technical requirements” – are not replacing their non-GPS handsets, despite Verizon's efforts to encourage handset upgrades.<sup>34</sup> Furthermore, the growth rate in Verizon's GPS handset penetration has recently slowed because an increasing proportion of customers buying new handsets are trading in E911-compliant handsets and because of decreasing churn.<sup>35</sup> Verizon argues that the 95% penetration milestone “is uniquely challenging because it depends on actions *by customers* to change out their handsets.”<sup>36</sup>

13. Verizon contends that the limited, time-specific relief from the handset penetration requirement it requests is consistent with applicable legal waiver standards, as well as the public interest, and does not frustrate the Commission's E911 objectives.<sup>37</sup> It argues that it has come as close as possible to achieving full compliance, and it will continue its efforts to meet the 95% milestone as early as possible. It also proposes to expand<sup>38</sup> and continue reporting on handset penetration each quarter until the milestone is reached.<sup>39</sup>

## 2. Comments

14. Comments in support of Verizon's request were filed by CTIA – the Wireless Association, Centennial Communications Corp., and two public service commissions.<sup>40</sup> CTIA urged the Commission to

---

<sup>31</sup> *Id.* at 4-11.

<sup>32</sup> *Id.* at 11-14.

<sup>33</sup> *See id.* at 11-13; Verizon Reply Comments at 2 n.2 (clarifying its earlier statement that one-third of the nation's PSAPs have deployed Phase II). *See also* National Emergency Number Association (NENA) Comments at 2.

<sup>34</sup> Verizon Request at 17-18.

<sup>35</sup> *Id.* at 19-21.

<sup>36</sup> Verizon Reply Comments at 1 (emphasis in original).

<sup>37</sup> Verizon Request at 23-29.

<sup>38</sup> Verizon states that, even though its specific compliance plan did not require it to provide data on the number or percentage of its customers owning GPS handsets, it will begin providing GPS handset penetration information upon grant of its request. *See id.* at 31. *See also* *Verizon Waiver Order*, 16 FCC Rcd at 18375-18377 ¶ 31. In addition, Verizon commits to continue quarterly reporting beyond the February 1, 2006 reporting deadline and will continue filing the reports until it achieves the 95% handset penetration requirement. *See* Verizon Request at 31.

<sup>39</sup> Verizon Request at 30-31.

<sup>40</sup> *See* Comments of CTIA – The Wireless Association on Verizon Wireless Request for Limited Waiver, WT Docket No. 05-301 (filed Nov. 4, 2005); Comments of the North Dakota Public Service Commission (NDPSC), WT Docket No. 05-301 (filed Nov. 4, 2005); Letter Comments of South Dakota Public Utilities Commission, WT (continued....)

suspend the December 31, 2005, deadline for 95% penetration of location-capable handsets, in addition to allowing Verizon additional time to meet the penetration threshold.<sup>41</sup> CTIA also urged the Commission to avoid enforcing its rules in a manner that forces consumers to give up their handsets unwillingly.<sup>42</sup> Centennial commented that Verizon's request amply demonstrates good cause for the limited relief sought, and outlines a clear path to full compliance in accordance with Commission rules and policy.<sup>43</sup>

15. In their comments, the North Dakota Public Service Commission (NDPSC) and the South Dakota Public Utilities Commission (SDPUC) supported reasonable flexibility with respect to the December 31, 2005 compliance deadline, and noted that coverage gaps in rural portions of their states make the continued use of higher powered analog phones a safer choice than location-capable digital phones for certain consumers.<sup>44</sup>

16. Two public safety organizations, the Association of Public-Safety Communications Officials-International, Inc. (APCO), and the National Emergency Number Association (NENA), did not object to grant of Verizon's request for a six-month extension for compliance. NENA stated that "[b]ased on Verizon's reported efforts and its near-achievement of the 95% threshold, NENA has no objection to a waiver that would extend the time for meeting the location-capable handset requirement to June 30, 2006, provided that quarterly reporting continues as offered by the carrier,"<sup>45</sup> and APCO noted that Verizon "appears to have made significant efforts to meet its E9-1-1 obligations, and those efforts should be given appropriate consideration in the Commission's review of its waiver request."<sup>46</sup> However, NENA disapproved of Verizon's apparent reliance upon the lack of PSAP readiness to receive and use Phase II wireless caller location information as a grounds for seeking relief from the handset penetration rule.<sup>47</sup> NENA noted that, "[i]nherent in the FCC rule . . . is the policy choice that, if there is to be disparity of deployment, the wireless carrier must be ready ahead of (or independently of) the readiness of the PSAP."<sup>48</sup>

### III. DISCUSSION

17. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005, for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase

(Continued from previous page)

Docket No. 05-301 (filed Nov. 3, 2005); Comments of Centennial Communications Corp. on Verizon Wireless's Request for Limited Waiver, WT Docket No. 05-301 (filed Nov. 3, 2005).

<sup>41</sup> See CTIA Comments at 1.

<sup>42</sup> See *id.* at 4 (citing comments of the National Association of Regulatory Utility Commissioners in support of the Joint Petition of CTIA and the Rural Cellular Association for Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102 (filed June 30, 2005)).

<sup>43</sup> See Centennial Comments at 1-4.

<sup>44</sup> See NDPSC Comments at 2; SDPUC Comments at 1.

<sup>45</sup> NENA Comments at 2.

<sup>46</sup> APCO Comments at 2.

<sup>47</sup> See NENA Comments at 1-2.

<sup>48</sup> *Id.* at 2 (quoting the language of 47 C.F.R. § 20.18(g)(1), "Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall . . .").

II would be fully implemented as quickly as possible.<sup>49</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information.<sup>50</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.<sup>51</sup>

18. Consistent with these considerations, and for the reasons set forth below, we find that the waiver request made by Verizon does not meet the Commission's standard for relief from the E911 requirements. In light of the penetration level Verizon reached by December 31, 2005, and the relatively short period by which it expects to achieve compliance, however, we will not at this time pursue enforcement action. We nevertheless impose reporting requirements to permit effective monitoring of Verizon's progress toward full compliance with the Commission's E911 requirements.

19. As with other carriers, Verizon has been aware of the December 31, 2005 deadline for over five years<sup>52</sup> – an ample period for Verizon to determine and implement the steps necessary to comply with the Commission's Rules. Under the circumstances of this case, we do not believe that Verizon has satisfied the Commission's E911 waiver standards. We first note that the results of Verizon's efforts as of December 31, 2005 fell short of the 95% penetration standard. Despite more than a five-year lead time, Verizon indicates that it reached 91% penetration in October 2005, and 93% penetration by January 31, 2006.<sup>53</sup> It thus has failed to comply with the 95% penetration requirement. Although Verizon represents that it has undertaken efforts to promote adoption of GPS handsets via various marketing and consumer education activities,<sup>54</sup> it admits, with respect to its subscribers who have not yet upgraded to location-capable handsets, that these efforts "have not enticed these legacy customers to convert to GPS-capable handsets."<sup>55</sup> Although Verizon made some efforts to encourage customers to purchase location-capable handsets, Verizon knew or should have known prior to the December 31, 2005 deadline that those efforts were proving inadequate for achieving timely compliance. For example, to the extent Verizon offered free or reduced-price location-capable phones as an inducement to its subscribers to upgrade non-location capable handsets, Verizon could have eliminated any requirement that such customers also accept as a

---

<sup>49</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>50</sup> Phase I E911 service provides a PSAP with data elements containing the telephone number of the originator of the 911 call and the location of the cell site or base station receiving the 911 call. See 47 C.F.R. § 20.18(d). Thus, the actual location of the caller can be miles distant from the location information provided to the PSAP, with consequent delay in providing the caller with emergency services, assuming that the caller can actually be located. Phase II service, by comparison, has a required location accuracy of 100 meters for 67% of calls and 300 meters for 95% of calls (network based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (handset based location solution). See 47 C.F.R. § 20.18(h)(1)-(2). See also *supra* ¶ 4.

<sup>51</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

<sup>52</sup> See *Fourth MO&O*, 15 FCC Rcd at 17455-56 ¶¶ 36-37.

<sup>53</sup> Verizon Request at 1, 4, 25-26; Verizon E911 Report at 2.

<sup>54</sup> See *id.* at 4-11.

<sup>55</sup> See *id.* at 17.

condition of receipt of compliant phones a renewed or extended service contract, which would likely have improved the effectiveness of its efforts.

20. Verizon offers as a reason for its non-compliance the reluctance of some of its customers to upgrade to location-capable phones.<sup>56</sup> If Verizon found its subscribers resistant to adopting location-capable handsets, however, it should have taken additional steps to increase penetration levels to ensure compliance by the December 31, 2005 deadline. Verizon's claim that some of its customers resist upgrading because they rely on the use of handsets with "special applications," "technical requirements," or "3-watt booster capability" lacks specifics.<sup>57</sup> For example, Verizon does not specify how many of its customers rely on the use of these phones, or whether it can take any steps to reduce the need to use them in certain portions of its service territory. We also do not know what plans Verizon may have to expand digital coverage into areas where a location-capable phone may be unable to communicate with the network, or whether it has investigated the present or future availability of higher-power, location-capable phones for use in such circumstances.<sup>58</sup>

21. We equally discount Verizon's argument that lack of PSAP readiness in some areas justifies its non-compliance.<sup>59</sup> The lack of PSAP readiness in some areas to receive and utilize wireless caller information does not provide a basis for affording relief from the December 31, 2005 deadline. Handset deployment benchmarks operate independent of PSAP readiness. In this regard, we agree with NENA that location-capable handsets benefit public safety even if the customer's local PSAP is not ready for Phase II, due to the mobile nature of wireless phones.<sup>60</sup> When customers travel, a location-capable phone provides Phase II service in the many communities where PSAPs are, in fact, Phase II ready. Accordingly, we find unpersuasive the argument that the state of PSAP readiness for Phase II service is a valid consideration when evaluating requests for extension of the handset penetration deadline.

22. We also are not persuaded that lower than expected "churn" justifies Verizon's non-compliance with the December 31, 2005 deadline.<sup>61</sup> When the Commission adopted a handset penetration requirement in 1999, it emphasized that, while seeking "largely to rely on market forces, coupled with the requirement that new activations be ALI-capable, to replace or upgrade handsets," carriers were required to take "additional steps to ensure that the public safety goals of this proceeding are achieved within a reasonable period regardless of normal handset churn."<sup>62</sup> The Commission specifically suggested that such

---

<sup>56</sup> See Verizon Request at 17-19.

<sup>57</sup> See *id.*

<sup>58</sup> Two Tier III carriers have stated that they will introduce a "digital bag-phone manufactured by Motorola which will have transmission characteristics that approach those of traditional analog phones" and will make available for purchase "external antennas and signal boosters that can be attached to [their] ALI-capable phones to enhance the signal quality." See Request for Limited Waiver of Eastern Sub-RSA Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005); Request for Limited Waiver of Washington RSA No. 8 Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005).

<sup>59</sup> See Verizon Request at 11-14.

<sup>60</sup> See NENA Comments in WT Docket No. 05-288 (filed Oct. 21, 2005) at 4. See also Joint Petition of CTIA and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Docket No. 05-288, *Order*, FCC 06-59, ¶ 22 (rel. Jan. 5, 2007) (*CTIA/RCA Order*).

<sup>61</sup> See Verizon Request at 21-23.

<sup>62</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17412 ¶ 52 (1999) (*Third R&O*).



efforts could include “lower rates for customers using ALI-capable handsets, rebates or generous allowances to encourage trade-ins of non-capable handsets, or actual handset exchanges or retrofitting.”<sup>63</sup> Thus, if carriers experience low churn rates, they should then take more aggressive affirmative steps to encourage adoption of location-capable handsets, rather than simply pointing to lower than expected churn levels as a basis for supporting waiver relief.

23. We note that other carriers already have undertaken or committed to specific efforts beyond those described by Verizon. For example, Verizon Wireless Puerto Rico (VzWPR), a Tier III carrier, initiated a campaign to call all customers with non-GPS-capable handsets and offer them: (i) a choice between two free GPS-compliant handsets with the renewal of the customer’s contract; (ii) a one-year contract term, rather than the usual two years; and (iii) 100 free minutes per month for three months.<sup>64</sup> As a result of these measures, VzWPR states that it reached 95% penetration of GPS-capable handsets on Dec. 19, 2005 and is now in full compliance with Section 20.18(g)(1)(v) of the Commission’s rules.<sup>65</sup> In another instance, Great Lakes of Iowa, another Tier III carrier, stated in a pleading filed with the Commission that, as part of its efforts to achieve 95% penetration, it “called each TDMA and analog customer and, as an incentive to migrate to the CDMA network, offered them a free location capable phone and a month of free service if they upgraded their phones,” and also “offered to waive its two year contract term, allowing these customers to upgrade to a free phone before their contracts would normally award another free phone.”<sup>66</sup> Although not exhaustive, these examples illustrate more aggressive efforts that Verizon could have taken to ensure timely compliance with the 95% requirement. Moreover, these efforts were undertaken by Tier III carriers that also serve many rural or remote areas and have smaller customer bases than Verizon, a Tier I carrier.<sup>67</sup>

24. We find that the circumstances cited by Verizon are not appreciably different than those encountered by other carriers. Thus, Verizon has not shown that it faced the “special circumstances” contemplated by the Commission’s E911 waiver criteria, much less the “extraordinary circumstances” that the Commission established as a threshold requirement for relief beyond that afforded Verizon in the *Verizon Waiver Order*. While Verizon received some support for its waiver request from certain public safety organizations,<sup>68</sup> we must find that its request, when analyzed in the context of all relevant factors, fails to satisfy the waiver requirements. We acknowledge that Verizon reports reaching a handset penetration level of between 91-93% by December 31, 2005 and that its requested extension is of limited duration, until June 30, 2006. Although those factors alone do not justify relief absent a showing that special or extraordinary circumstances prevented Verizon’s timely compliance with the deadline, those

---

<sup>63</sup> *Third R&O*, 14 FCC Rcd at 17413 ¶ 53.

<sup>64</sup> See Letter from Suzanne Yelen, counsel for Verizon Wireless Puerto Rico, to Marlene H. Dortch, FCC, CC Docket No. 94-102 (filed Dec. 23, 2005) (requesting withdrawal of request for limited waiver of handset penetration rule).

<sup>65</sup> *Id.*

<sup>66</sup> See Great Lakes of Iowa, Inc. d/b/a CellularOne Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules, CC Docket No. 94-102, filed Nov. 10, 2005, at 2-3.

<sup>67</sup> We also note that carriers have a history of upgrading their networks to more advanced air interfaces, such as from analog and TDMA systems to CDMA and GSM, and have been quite successful in convincing customers to change handsets to accommodate the new air interface, effectively requiring current customers to change out their handsets in order to continue receiving service.

<sup>68</sup> See *supra* ¶¶ 15-16.

factors do suggest that it is not necessary at this time to pursue enforcement action to bring Verizon into compliance. However, we fully expect Verizon to come into compliance as soon as possible and, in any event, no later than June 30, 2006.

25. *Reporting Requirements.* In order to closely monitor and assess the status of Verizon's efforts toward compliance with the E911 requirements, including the 95% handset penetration requirement, we require Verizon to:

- Submit to the Commission status reports on the first of every month, beginning February 1, 2007, until Verizon achieves 95% handset penetration. These reports must include detailed information that describes and discusses with specificity: (1) Verizon's efforts to encourage customers to upgrade to location-capable handsets; and (2) the percentage of Verizon's customers with location-capable handsets.
- Within five days of achieving a 95% handset penetration rate, submit to the Commission a letter certifying Verizon's full compliance with Section 20.18(g)(1)(v).
- Submit to the Commission quarterly reports (every February 1, May 1, August 1 and November 1), beginning February 1, 2007, which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); and (2) the estimated dates on which Phase II service will be available to PSAPs served by Verizon's network. These quarterly reports must be filed until one year after Verizon certifies compliance with the 95% handset penetration requirement.

#### IV. CONCLUSION

26. Under the circumstances of this case, we find that Verizon has failed to satisfy the Commission's waiver standards. For these reasons, we deny Verizon's request to extend the handset penetration deadline. In light of the penetration level Verizon reached as of December 31, 2005, and the limited duration of its requested extension, it is not necessary at this time to pursue enforcement action to bring Verizon into compliance with Section 20.18(g)(1)(v). We impose reporting requirements to ensure that Verizon achieves full compliance with the Commission's E911 requirements.

#### V. PAPERWORK REDUCTION ACT

27. This document contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies were invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

**VI. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED, pursuant to Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

29. IT IS FURTHER ORDERED, that the Request for Limited Waiver by Verizon IS DENIED.

30. IT IS FURTHER ORDERED, that Verizon is subject to the reporting requirements specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary